

REMARKS

1. After entry of this paper, claims 1, 3-5, 10, 12-20, 22, 23, 28-32, 34-47, 49, 50, 52, 53, 67-89, 161-166, 172-174 are pending.

Reconsideration of this application is respectfully requested.

2. The undersigned attorney conducted a telephonic interview with Examiner Patel on March 18, 2008, to discuss a proposed amendment Facsimile transmitted to the Examiner on March 10, 2008. The proposed amendment cancelled claims 55-66 and amended claims 1, 10, 34, 49, 50, 68, 73, 74, 83, 165, 166, 172 to recite "the shell assembly comprising: first and second halves; a protector plate connecting the first and second halves while allowing the first and second halves to move relative to one another."

Although the Examiner agreed that the proposed amendment distinguished the claims over the cited prior art of record, he suggested further amending the claims to distinguish them over other prior art references, which he did not identify. The Examiner's suggested amendments included limiting the use of the apparatus to protecting the upper torso of the user; reciting the first and second halves of the shell assembly are for placement over the shoulders of the user; and reciting fasteners for fastening the first and second halves of the shell assembly with the protector plate.

3. Claims 1, 3-5, 10, 12-20, 22, 23, 28-32, 34-47, 49, 50, 52-53, 55-89, 161-166 and 172-174 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,295,654 to Farrell in view of U.S. Patent 6,321,386 to Monica.

Dependent claims 55-66 have been cancelled and independent claims 1, 10, and 34 have each been amended to recite inter alia,

*An upper torso protector apparatus comprising:
a shell assembly, the shell assembly comprising:
first and second halves for placement over
shoulders of a user, thereby enabling the apparatus to
protect the upper torso of the user;
a protector plate connecting the first and second
halves;
fasteners adjacent opposing edges of the first and
second halves for movably fastening the first and second
halves with the protector plate, thereby allowing the first
and second halves to move relative to one another. . . .*

Farrell in view of Monica do not disclose, teach or suggest the upper torso protector apparatus recited in claims 1, 10, and 34. Hence, claims 1, 10, 34, are allowable over Farrell in view of Monica.

Claim 34 also recites, "a cushioning pad fastened to the shell assembly, the cushioning pad comprising a laminate including at least three impact absorbing layers, at least one of the at least three impact absorbing layers allowing air to flow therethrough and at least one of the at least three impact absorbing layers comprising at least one substrate of visco-elastic polymer."

Farrell in view of Monica do not disclose, teach or suggest an upper torso protector apparatus that employs at least one substrate of visco-elastic polymer. Hence, claim 34 further distinguishes over Farrell in view of Monica.

With respect to dependent claims 3-5, 12-20, 22, 23, 28-32, 35-47, 49, 50, 52-53, 67-89, 161-166 and 172-173, which recite additional features of the invention, it is urged that these claims are allowable over Farrell in view of Monica for at least the same reasons as stated for independent claims 1, 10, and 34.

Independent claim 174 has been amended to recite,

A protective shoulder pad apparatus comprising:

a white shell assembly comprising:

first and second halves *for placement over shoulders of a user*;

front and rear protector plates connecting the first and second halves;

fasteners adjacent opposing edges of the first and second halves for movably fastening the first and second halves with the front and rear protector plates, thereby allowing the first and second halves of the shell assembly to move relative to one another; and

a cushioning pad fastened to the shell assembly, the cushioning pad comprising:

at least one foam layer which allows air to flow therethrough;

an outer fabric layer *facing* toward the shell assembly; and

an inner fabric layer which allows air to flow therethrough, the inner fabric layer facing away from the shell assembly.

Farrell in view of Monica do not disclose, teach or suggest the protective shoulder apparatus recited in claim 174. Hence, claim 174 is allowable over Farrell in view of Monica.

In view of the foregoing, withdrawal of this rejection is respectfully urged.

4. Claims 13-16, 23, 28-32, 34, 35, 52-54 and 75-80 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Farrell in view of Monica and further in view of U.S. Patent 6,453,477 to Bainbridge et al. (Bainbridge).

Claims 13-16, 23, 28-32, 34, 35, 52-54 and 75-80 now recite,

*An upper torso protector apparatus comprising:
a shell assembly, the shell assembly comprising:
first and second halves for placement over
shoulders of a user, thereby enabling the apparatus to
protect the upper torso of the user;
a protector plate connecting the first and second
halves;
fasteners adjacent opposing edges of the first and
second halves for movably fastening the first and second
halves with the protector plate, thereby allowing the first
and second halves to move relative to one another. . . .*

Farrell in view of Monica do not disclose, teach or suggest the upper torso protector apparatus recited in claims 13-16, 23, 28-32, 34, 35, 52-54 and 75-80. Bainbridge fails to cure the deficiencies of Farrell in view of Monica, as Bainbridge fails to disclose, teach or suggest such an upper torso protector comprising a shell assembly including first and second halves for placement over shoulders of a user, a protector plate connecting the first and second halves, and fasteners adjacent opposing edges of the first and second halves for movably fastening the first and second halves with the protector plate, thereby allowing the first and second halves to move relative to one another. For at least these reasons, claims 13-16, 23, 28-32, 34, 35, 52-54 and 75-80 are allowable over Farrell in view of Monica.

In view of the foregoing, withdrawal of this rejection is respectfully urged.

5. Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that the claims are in condition for allowance. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact applicants' undersigned attorney at his number listed below.

6. The Commissioner is hereby authorized to charge payment of the fee for the petition for the one (1) month extension of the time, and any additional filing fees required under 37 CFR

1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this paper, or credit any overpayment to Deposit Account No. 04-1679.

Respectfully submitted,

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